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January 21, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

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**Re: Interconnection and Resale Obligations Pertaining to  
Commercial Mobile Radio Services, CC Docket No. 94-54;  
PCIA Petition for Forbearance, DA 97-1155**

Dear Ms. Salas:

I am writing on behalf of the Telecommunications Resellers Association ("TRA") to inform you that David Gusky, Vice-President and Director of Wireless Services, TRA, and I met today with Peter A. Tenhula, Legal Advisor to Commissioner Michael K. Powell, to discuss the referenced proceedings. The attached handout was used in the presentation. I am providing two copies of this letter to your office. If you have any questions, please contact me.

Respectfully submitted,

*David Sieradzki*

David L. Sieradzki  
Counsel for the Telecommunications  
Resellers Association

Enclosures

cc: Peter A. Tenhula

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**Ex Parte Presentation of the  
Telecommunications Resellers Association**

**Re: Personal Communications Industry Association (PCIA)  
Petition for Forbearance  
and  
CC Docket No. 94-54**

**January 1998**

**Some of the many consumer benefits provided by resellers:**

- *Focus on smaller customers.* Resellers often focus on residential and smaller business customers, giving them pricing discounts and customer service that facilities-based carriers often make available only to larger customers. By reselling volume discounted offerings, resellers can make available discounted rates to smaller customers that otherwise only are available to larger customers -- just as they do in the long distance market.
- *Focus on unserved market segments.* Some resellers have focused their marketing efforts on individual consumers and small businesses in particular ethnic communities that may not receive ample marketing attention from the underlying CMRS licensees.

- *Tailored service offerings.* Many resellers target specific industry segments, such as construction firms, attorneys and other professional firms, universities, and quasi-governmental agencies that have been refused government rates by cellular licensees.
- *Choice of networks and features.* Resellers can offer their customers a choice of services based on multiple underlying CMRS networks -- each of which offer different advantages and disadvantages, including technology type, coverage areas, roaming arrangements, and other service terms. Resellers can tailor a service package to meet each customer's particular mix of needs.
- *Prepaid services.* Certain resellers are offering and heavily marketing prepaid wireless services designed for credit-impaired consumers and small businesses.
- *Innovative pricing.* Resellers are pricing services in ways that many cellular licensees have not yet done, such as offering service with no term commitments.

- *Flexible service offerings.* Resellers are free to offer services more flexibly than many CMRS licensees -- for example, by allowing multiple phones on a single account to share credit for partial minute-based discounts.
- *Customer service.* Many resellers compete by offering high-quality, customer-friendly services that are not offered by underlying carriers, such as 24-hour customer service and customized, detailed billing.
- *Packaging with other services.* Some resellers offer CMRS service packaged with a wide range of other services, including some obtained from other providers, such as paging, voice mail, alarm monitoring, 800 calling cards, emergency road service, and handset insurance and replacement programs.

## **The Benefits of Unrestricted Wireless Resale**

### **1. Consumers Have More Choices.**

- Wireless resellers offer a broad range of innovative services and service packages, many of which are not offered by facilities-based CMRS carriers.
- Competition among licensees alone is unlikely to provide these benefits to consumers and the public interest.

## **2. Consumers Pay Lower Prices.**

- Resale plays a critical role in ensuring reasonable and nondiscriminatory prices in the CMRS marketplace.
- NWRA's survey reveals that CMRS resellers' rates are, on average, about 10% below those of the underlying facilities-based carriers.
- Resellers bring the benefits of volume discounts to smaller customers.

### **3. Wireless Resale Makes Widespread Competition in Full-Service Offerings Possible.**

- Wireless services are likely to be an essential component of full-service offerings (which likely will include local, long distance, wireless, and Internet offerings).
- Without wireless resale, only wireless licensees will be able to participate in a full-service marketplace.
- Lack of wireless resale thus is a barrier to entry not only to the wireless market, but also to the wireline telecommunications market.
- Wireless resale reduces barriers to entry in both the wireless and full-service markets.



#### **4. Wireless Resale Promotes Facilities Build-Out**

- The availability of nondiscriminatory resale and roaming is essential to enable PCS licensees to fill out their coverage areas.
- Licensees with smaller licensed service areas need resale to compete against licensees with broader licensed service areas.

**Market Forces Alone Will Not Ensure the Availability  
of Unrestricted Resale.**

**1. Broadband PCS is developing unevenly and unpredictably.**

- A number of PCS licensees have yet to complete build-out of their systems.
- Many are experiencing financial difficulties.

**2. Most broadband PCS providers have been uninterested in resale.**

- Even with the resale rule, NWRA's survey of wireless resellers demonstrates that 61 percent of wireless resellers that have sought to obtain resale arrangements with broadband PCS providers have been unable to do so, and only 7 percent have established resale arrangements with operational broadband PCS providers.

**3. Many broadband PCS licensees are owned by current cellular companies.**

- Many cellular companies have a history of hostility (or at least indifference) to resale.
- In a full-service world, incentives may be strong to impede wireless resale to one's competitors.

**4. Wireless products are not necessarily easy substitutes for one another.**

- Switching an underlying carrier may involve significant transaction costs, often including the cost of purchasing a new handset.
- Lack of interim number portability deters customers from switching.
- Many carriers still require term commitments.

- **On reconsideration in CC Docket 94-54, the Commission should eliminate the five-year sunset of the resale requirement for CMRS providers.**
  - The Commission cannot predict today what market conditions will be in the CMRS market five years down the road.
  - The resale requirement serves an important function even in a fully competitive market with multiple networks.
- **The Commission should deny PCIA's request to forbear from requiring resale of PCS providers.**

## **Sections 201 and 202 Must Be Retained as Critical Backstop Protections.**

- 1. The basic obligations of Sections 201 and 202 are necessary as a “backstop” to ensure that broadband PCS providers’ rates, terms, and conditions are just, reasonable, and not unreasonably discriminatory, and to promote competition.**
  - Even some of the largest incumbent CMRS providers (Bell Atlantic/NYNEX Mobile, GTE, and Vanguard) argue that these sections offer important protection.
  - It is impossible for the Commission to predict with certainty that no CMRS provider is likely ever violate to these sections.

**2. PCS providers may have incentives to discriminate or behave in anticompetitive fashion toward competitors (competing PCS licensees and competitors providing full-service packages).**

**Examples:**

- Short-term predatory pricing strategies that might deter or slow the build-out of C block or other licensed broadband PCS operations;
- Denial of resale or roaming to competitors;
- Discrimination against a carrier's existing customers, who may be "locked in" to its service due to the transaction costs discussed above.

- 3. The existence of Sections 201 and 202 minimizes the need for more specific regulation.**
  
- 4. In past decisions to forbear, the Commission has relied on the continued applicability of Sections 201 and 202, combined with the enforcement authority of Section 208.**



## **Conclusion**

**The Commission should eliminate the five-year sunset of the resale rule.**

**In sum, PCIA has failed to satisfy any of the following prerequisites for forbearance from either the resale rule or Sections 201 and 202:**

- (1) that these provisions are unnecessary to ensure that prices, terms and conditions will be just, reasonable, and not unreasonably discriminatory;
- (2) that consumers will be protected in the absence of these rules, and
- (3) that forbearance is in the public interest.